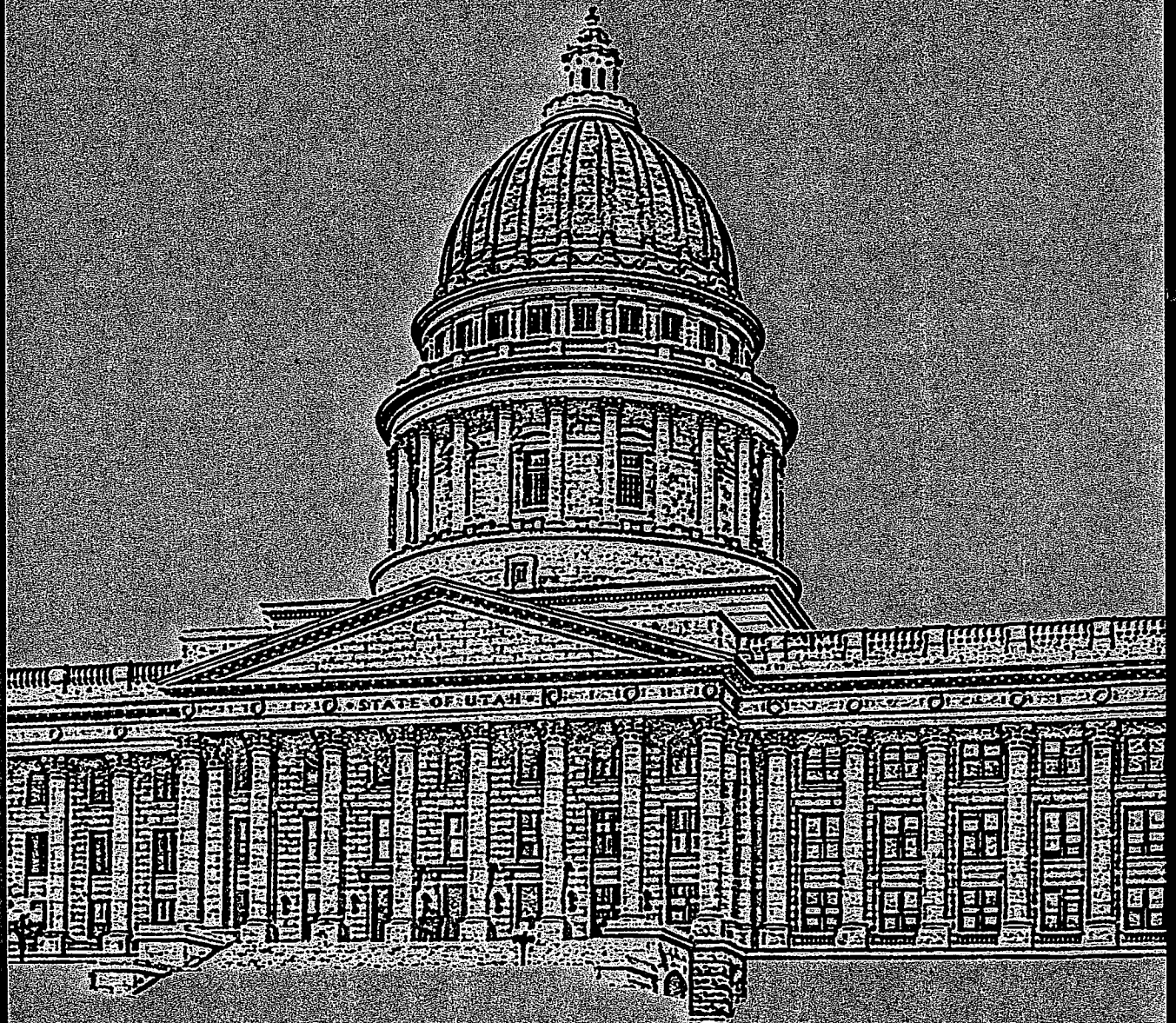


# UTAH STATE GOVERNMENT

## A CITIZEN'S GUIDE



WRITTEN BY THE OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL

# Chapter 7

## The Judicial Branch

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The judiciary is usually considered the third branch of government—the other two being the executive and legislative. The framers of the federal constitution considered this branch the weakest of the three. Despite this initial perspective on the judiciary, this branch has proven to be a powerful and enormously influential part of the national scene. The same can be said for the fifty state court systems. Two experts on state governments wrote this about our state court systems, "[t]hey determine the division of powers between state and local governments, outline relations within families and among contractors, define individual rights and liberties, and levy criminal sanctions. Their rulings affect people who never go to court. Decisions on school segregation, medical malpractice, usury limits, and product liability affect all of us."<sup>1</sup>

### In this chapter:

Constitutional Powers (p. 117)  
Utah Courts (p. 118)  
Administration (p. 122)  
Judicial Selection, Retention, Discipline, and Removal  
(p. 124)  
The Judicial Process (p. 128)  
Grand Jury (p. 129)  
Use of Information Technology (p. 130)

### CONSTITUTIONAL POWERS

"The judicial power of the state shall be vested in a Supreme Court, in a trial court of general jurisdiction known as the district court, and in such other courts as the Legislature by statute may establish."<sup>2</sup> With that broad language, the framers of the Judicial Article to Utah's Constitution in 1984 laid the groundwork for the current Utah judicial system for which the Utah Supreme Court, the district court, and the legislature share responsibility.

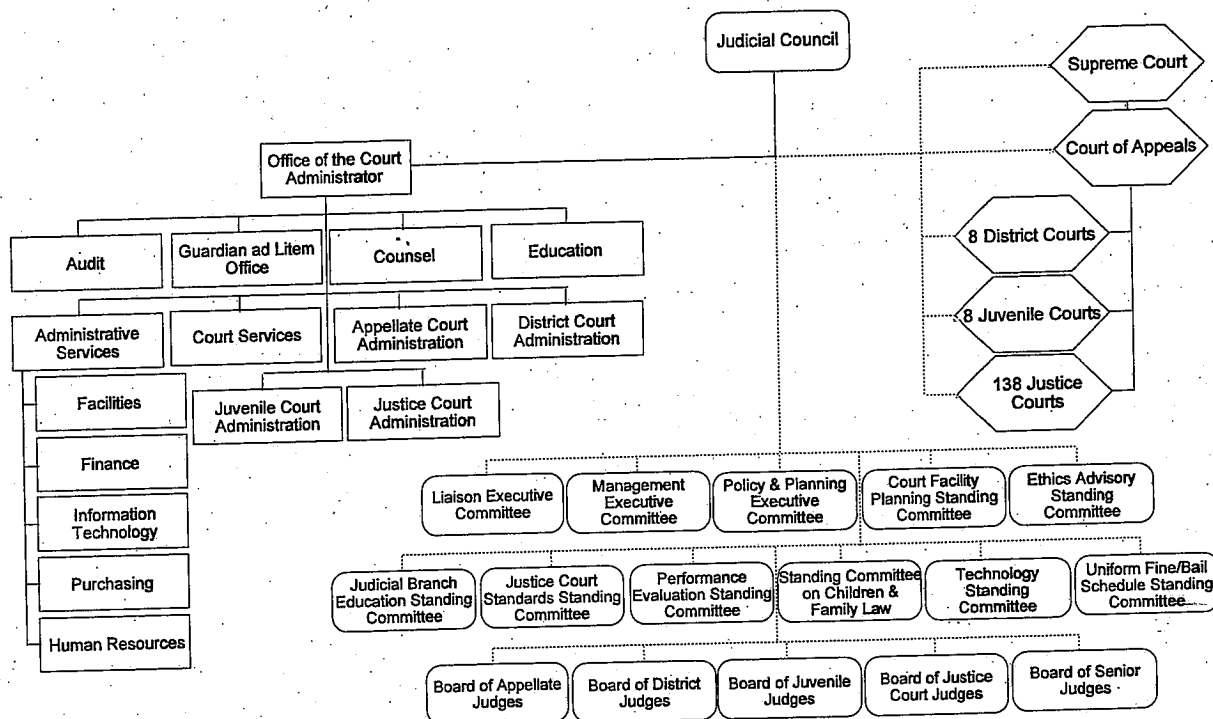
In carrying out their responsibilities, the legislature and the Judicial Council, working under the framework of the Utah Constitution which establishes the Utah Supreme Court and district courts, have created a court system, overseen by the Administrative Office of the Courts, that addresses the needs of the citizens of the state as expeditiously as possible.

### *Judicial Council as Overseer*

The Judicial Council, chaired by the chief justice of the Utah Supreme Court, has the major responsibility for oversight of the courts.<sup>3</sup> Through the Administrative Office of the Courts, the Judicial Council directs the day-to-day activities of the various departments within the judicial system. The Judicial Council's administrative responsibilities include rulemaking and, in conjunction with the Utah Supreme Court, hiring of the state court administrator.

Figure 7-1

## Judicial Branch



### Rulemaking

Rules are the main governing tool for the courts in Utah. They determine practice, procedure, administration, qualifications for certain positions, and establish programs. The Utah Supreme Court is charged with adopting "rules of procedure and evidence to be used in the courts of the state."<sup>4</sup> The Judicial Council is responsible for promulgating the Rules of Judicial Administration, which are internal administrative rules that regulate the day-to-day routines of the Administrative Office of the Courts as well as attorney and judicial conduct.<sup>5</sup> It should be noted that the Utah Constitution gives the legislature the authority to amend rules of procedure and evidence adopted by the Utah Supreme Court.<sup>6</sup> The legislature may not, however, amend judicial administration rules as they are the rules that govern the internal workings of the courts.

### Regulation of Practice of Law

The Utah Supreme Court is also constitutionally tasked with the regulation of the practice of law.<sup>7</sup> This includes admission standards for attorneys practicing law in Utah, the administration of the state bar exam, admission of those candidates who successfully pass the exam, and discipline of those whose conduct as practicing attorneys do not meet the standards set out in the Rules of Professional Conduct. While much of this aspect of the court's responsibilities is delegated to the Utah State Bar, the Utah Supreme Court is the final arbiter of Rules of Professional Conduct and reviews all recommendations for attorney discipline.

### UTAH COURTS

The Utah Supreme Court and district courts are created by the constitution; all other courts in Utah are created by the legislature. These are the Utah Court of Appeals,<sup>8</sup> juvenile courts,<sup>9</sup> and

justice courts,<sup>10</sup> which include small claims courts. Circuit courts, which the legislature created in 1977, were repealed in 1996 and their functions merged into the district courts.

### *Supreme Court*

As the highest court in the state, the Utah Supreme Court is the final arbiter of legal disputes. The court of last resort for interpretations of state law, the Utah Supreme Court is made up of five justices. The chief justice is elected by the membership to serve a term of four years. An associate chief justice is elected in the same manner for a term of two years.

The Utah Supreme Court has original jurisdiction to decide matters of state law referred to it by a court of the United States, and to issue extraordinary writs or enforce any of its orders, judgments, or decrees.<sup>11</sup> Its appellate jurisdiction includes interlocutory appeals, cases certified to it from the Utah Court of Appeals, the discipline of members of the Utah State Bar, first degree and capital felony convictions in district court, final orders of certain formal adjudicative proceedings, and regarding the discipline of judges, a review of any Judicial Conduct Commission order of discipline.

### *Court of Appeals*

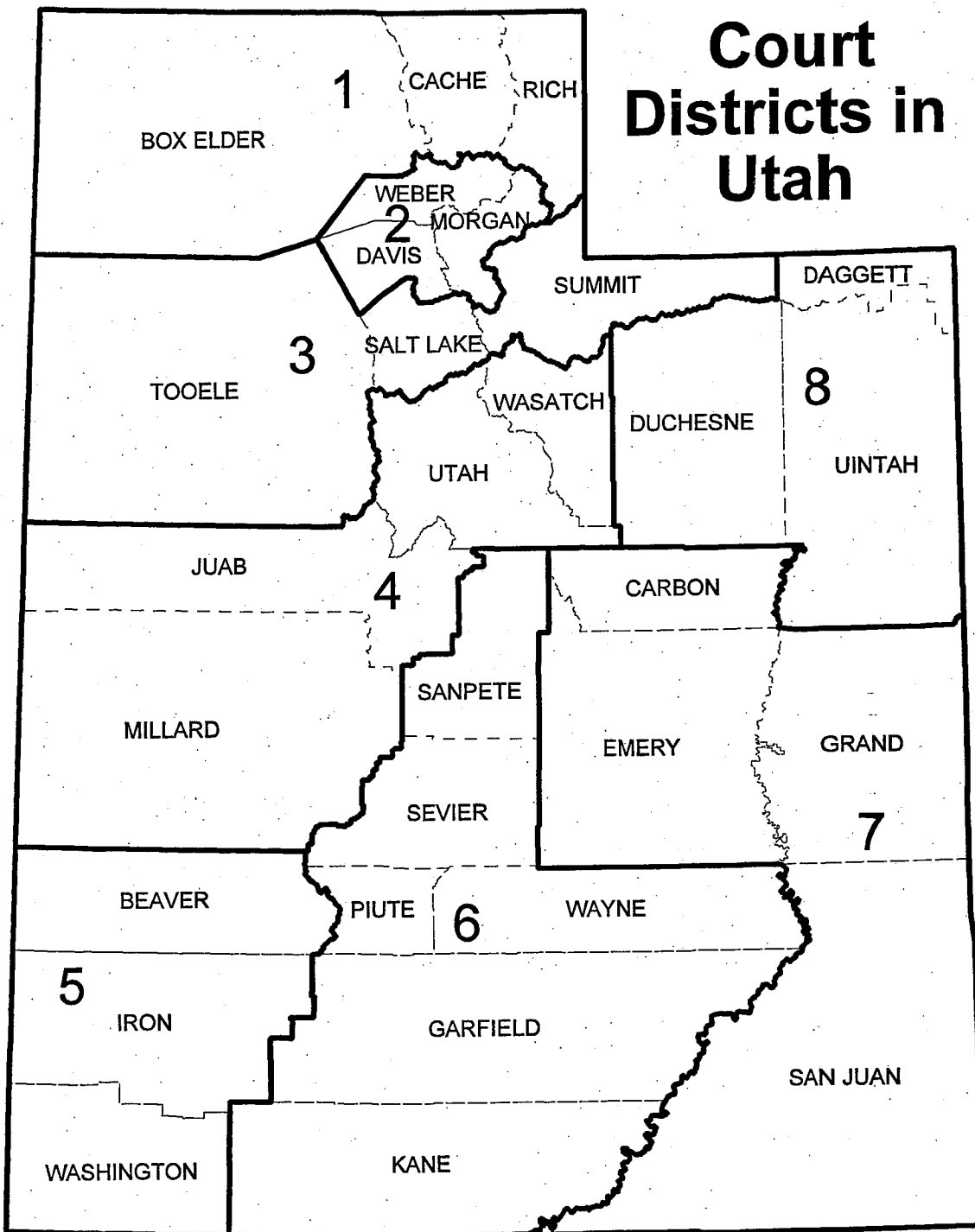
There are seven judges on the Utah Court of Appeals. Sitting in rotating panels of three, appellate judges hear all cases appealed from the judgment of a trial court except those reserved to the Utah Supreme Court, and final adjudicative orders of state agencies.<sup>12</sup> A presiding judge is elected by the membership and serves for a two-year term. The responsibilities of the presiding judge include the rotation and scheduling of panels and acting as a liaison between the Utah Court of Appeals and the Utah Supreme Court.<sup>13</sup>

### *District Courts*

As the trial court of general jurisdiction within the state, the district court is the workhorse of the judiciary. Except for adjudicatory matters appealed directly to the Utah Court of Appeals and actions filed directly with the Utah Supreme Court by law, "[t]he district court has original jurisdiction in all matters civil and criminal."<sup>14</sup> This includes civil lawsuits, divorce, child custody, probate, and criminal actions prosecuted by the state.

The judicial system is divided into eight geographic districts, with each district comprised of at least three counties (see figure 7-2). In total there are seventy district court judges in the state.

Figure 7-2



In addition to judges, the district courts also employ court commissioners.<sup>15</sup> These quasi-judicial officers of the court hear specific types of cases and make recommendations to judges as to final resolution. Court commissioners are regulated by the Judicial Council. There are currently eight court commissioners serving in three district courts throughout the state (see table 7-1).

Table 7-1

### Number of District Court Judges and Commissioners

| District | Counties                                      | # of Judges |          | # of Commissioners     |
|----------|---|-------------|----------|------------------------|
|          |   | District    | Juvenile |                        |
| 1        | Box Elder, Cache, Rich                        | 4           | 2        | 0                      |
| 2        | Weber, Davis, Morgan                          | 14          | 5        | 3                      |
| 3        | Salt Lake, Summit, Tooele                     | 28          | 9        | 4 district, 1 juvenile |
| 4        | Utah, Wasatch, Juab, Millard                  | 12          | 4        | 1                      |
| 5        | Beaver, Iron, Washington                      | 5           | 2        | 0                      |
| 6        | Garfield, Kane, Piute, Sanpete, Sevier, Wayne | 2           | 1        | 0                      |
| 7        | Carbon, Emery, Grand, San Juan                | 3           | 2        | 0                      |
| 8        | Daggett, Duchesne, Uintah                     | 2           | 1        | 0                      |

#### *Juvenile Courts*

Divided into the same eight geographic districts as the district court system and holding equal status with the district court,<sup>16</sup> the juvenile court generally has exclusive original jurisdiction over persons under eighteen years of age who violate any federal, state, or municipal law, and any child who is abused, neglected, or dependent. One exception is child custody in connection with a divorce when there is no allegation of abuse. Juvenile courts also have concurrent jurisdiction with the district and justice courts over adults contributing to the delinquency and neglect of a minor.

Traffic offenses committed by minors are handled by the juvenile court only if the minor is under sixteen years of age. If the minor is over sixteen years of age, the juvenile court only handles specific enumerated offenses that include automobile homicide, driving under the influence, and reckless driving.<sup>17</sup>

The twenty-six juvenile court judges across the state are selected by the same process as district court judges. There is also one juvenile court commissioner in the Third Judicial District.

#### *Justice Courts*

Dealing with Class B and C misdemeanors and infractions committed within their jurisdiction is the mainstay of justice courts. They are also responsible for local ordinance violations, and small claims actions. Established by municipalities and counties, these courts' jurisdiction is limited to their local government's boundaries.

The judges for these courts, county and municipal, are hired and treated differently than state court judges. County judges are initially appointed by a county commission and must stand for a retention election every four years. Municipal judges are appointed by city officials for four-year terms. Retention is by reappointment. Judges may be both county and municipal judges and, while a person applying for a judicial position in all other courts is required to be licensed to practice law in Utah, no such requirement exists for justice court judges.

#### *Court Administrators*

Each level of courts employs an administrator. The state court administrator is appointed by the Utah Supreme Court and serves at the pleasure of both the Utah Supreme Court and the Judicial Council.<sup>18</sup> The state court administrator is responsible for the overall management of the court



system within the state. Administrators for the appellate, district, juvenile, and justice courts are appointed by the state administrator in consultation with the chief justice of the Utah Supreme Court and the specific court's board of judges.

Table 7-2

| Judicial Qualifications* |     |                |                |
|--------------------------|-----|----------------|----------------|
| Court                    | Age | Utah Residency | Bar Membership |
| Supreme Court            | 30  | 5 years        | Yes            |
| Court of Appeals         | 25  | 3 years        | Yes            |
| District Court           | 25  | 3 years        | Yes            |
| Juvenile Court           | 25  | 3 years        | Yes            |
| Justice Court            | 25  | 3 years        | No             |

\*All judges must be citizens of the United States.

## ADMINISTRATION

### Judicial Council

Article VIII of the Utah Constitution creates a judicial council as the policy-making body of the Utah judiciary which is charged with the responsibility to adopt rules for the administration of the courts.<sup>19</sup> The council must be comprised of at least one representative from each court, and each court must elect one or more of its members to serve on the council.<sup>20</sup> In addition to the chief justice, the Utah Supreme Court is to elect one of its members to the council. One member is elected from the court of appeals, five members are elected by the board of district court judges, two members are elected by the juvenile court, three members are elected by the justice court judges, and one commissioner is elected by the Board of Commissioners of the Utah State Bar.

The chief justice of the Utah Supreme Court serves as the presiding officer of the council, as the chief administrative officer for the courts, and is responsible to ensure uniform adherence to the law and the rules adopted by the council and for the administration of the courts. Moreover, the presiding officer is to preside at council meetings, supervise and implement the policies of the council, and among other things, to serve as the chief spokesperson for the judiciary.<sup>21</sup>

In meeting its constitutional responsibilities, the Judicial Council created the Utah Code of Judicial Administration. The Code of Judicial Administration contains chapters on:

- Administration of the Judiciary
- Appellate Court Operations
- District Court Operations
- Judicial Council Organization
- Judicial Council Procedure
- Justice Court Operations
- Juvenile Court Operations
- Local Supplemental Rules
- Operation of the Courts<sup>22</sup>

As an independent constitutional entity responsible for the administration of the courts, the Judicial Council adopts rules regarding its roles and responsibilities, organization, and membership.<sup>23</sup> Within the chapter governing the organization of the Judicial Council, for example, a rule-making procedure has been adopted which governs the format of court rules, establishes an opportunity for a forty-five day public comment period, and allows rules to be adopted without

public comment when doing so is considered by majority vote of the council to be in the best interest of the Judiciary.<sup>24</sup>

These rules also permit the Judicial Council to create executive committees which consist of a Management Committee, Policy and Planning Committee, and a Liaison Committee. Each of these committees is comprised of members of the Judicial Council and each committee's role and responsibilities are defined by rule.<sup>25</sup> The Liaison Committee, for example, is charged with the responsibility to review legislation affecting the authority, jurisdiction, organization, or administration of the judiciary. It may, under certain circumstances, take a position opposing, or endorsing legislation.<sup>26</sup>

In addition to the Judicial Council and its executive committees, the rules grant the Judicial Council authority to establish the following standing committees: Technology Committee, Uniform Fine and Bail Schedule Committee, Performance Evaluation Committee, Ethics Advisory Committee, Justice Court Standards Committee, Judicial Branch Education Committee, Court Facility Planning Committee, and Children and Family Law Committee. The duties, responsibilities, and membership of these standing committees are also provided by rule.<sup>27</sup>

The rules also authorize the council to create ad hoc committees or task forces that may consider issues outside the scope of the standing committees and make recommendations to the council. Finally, the rules authorize the council to establish appellate, district, juvenile, justice, and senior court judge boards in an attempt to increase the level of participation and communication with the council and the courts.<sup>28</sup>

The Judicial Council has adopted rules governing public notice of its meetings and having its meetings open to the public.<sup>29</sup> The council is required, for example, to publish an annual meeting schedule and post a public notice and agenda at least twenty-four hours prior to each meeting. Due to unforeseen circumstances of an urgent nature, however, the Judicial Council, by rule, may hold a meeting without posting a public notice, but only after it has attempted to contact all the members of the council, a quorum is present for a meeting, and a majority of those present vote to hold the meeting.

Except under certain circumstances, such as when the character or mental health of an individual, the sale of real estate, or similar matters are discussed, the Judicial Council is required to open its meetings to the public. These rules do not apply, however, to the Judicial Council's management committee, policy and planning committee, liaison committee, or any of the council's standing or ad hoc committees, including the board meetings of the appellate, district, juvenile, justice, and senior court judges.<sup>30</sup> It should also be noted that a legislator or a representative of the Office of Legislative Research and General Counsel may attend any meeting of the Judicial Council at which a rule of the council is under consideration, and may comment on the rule.<sup>31</sup>

### *Court Administrator*

The chief administrative officer of the courts is the chief justice. By statute, the Utah Supreme Court is to appoint a professional administrator of the Judicial Council, who shall have the title of the administrator of the courts.<sup>32</sup> Once appointed by the Utah Supreme Court, the administrator of the courts is to serve under the general supervision of the chief justice, within the policies established by the Judicial Council, and at the pleasure of both the Utah Supreme Court and the Judicial Council. The administrator of the courts is responsible, among other duties, to organize and administer all the non-judicial activities of the courts, to assign and supervise all the work of all the non-judicial officers of the courts, and to assist the chief justice in implementing the rules established by the Judicial Council.<sup>33</sup>

In addition to preparing a budget for the entire court system, administering all of the procurement activities for the operation of the courts, and developing uniform procedures for the management of court business, the administrator of the courts is also responsible, under the



supervision of the chief justice, for establishing positions and salaries for assistant court administrators, including the positions of appellate court administrator, district court administrator, juvenile court administrator, and justices' court administrator. Administrators for a specified court are appointed by the administrator of the court, with the approval of the chief justice, and with the concurrence of the respective board of judges as established by the Judicial Council.<sup>34</sup>

### *Administrative Office of the Courts*

The administrator of the courts and any assistants appointed by the administrator are known collectively as the Administrative Office of the Courts.<sup>35</sup> The Administrative Office of the Courts is primarily responsible to provide administrative support to the Utah court system. Beginning with three employees in 1973, the Administrative Office of the Courts now employs approximately one hundred people with an annual budget in 2003 of just over \$9 million.<sup>36</sup>

Since the creation of the Administrative Office of the Courts, and under the direction of the Judicial Council, Utah courts operate under standardized policies and procedures. Non-judicial activities and employees of the courts are organized and administered in a consistent manner. All levels of Utah courts have an administrator while the state court administrator serves the Utah Supreme Court and the Judicial Council.

In addition to exercising its statutory powers, duties, and responsibilities,<sup>37</sup> the Administrative Office of the Courts is also responsible for a number of legislatively enacted directives that include (1) Alternative Dispute Resolution Program, which was established to promote the efficient operation of the courts by encouraging alternative dispute resolution to secure the just, speedy, and inexpensive determination of civil actions; (2) Data Processing Department, which has developed and implemented a court records database that is accessible to the entire judicial system; (3) the position of a Capital Law Clerk, who advises judges who conduct trials involving capital offenses; and (4) administrative services to the Guardian ad Litem program, which is responsible to assure that minors receive qualified legal services in abuse, neglect, and dependency proceedings.

## **JUDICIAL SELECTION, RETENTION, DISCIPLINE, AND REMOVAL**

### *Federal Model*

The federal judiciary is comprised of the U.S. Supreme Court (the highest court in the land), courts of appeals, and district courts, the latter of which hold trials. The federal judiciary is independent from both the legislative and executive branches of the federal government. Each of the branches are equal to the others in the sense that each was designed to perform an independent and indispensable function in the government. While the highest officers in the legislative and executive branches are elected to office, judges in the federal judiciary are not elected. Federal judges are appointed by the president of United States and are subject to confirmation by the United States Senate.

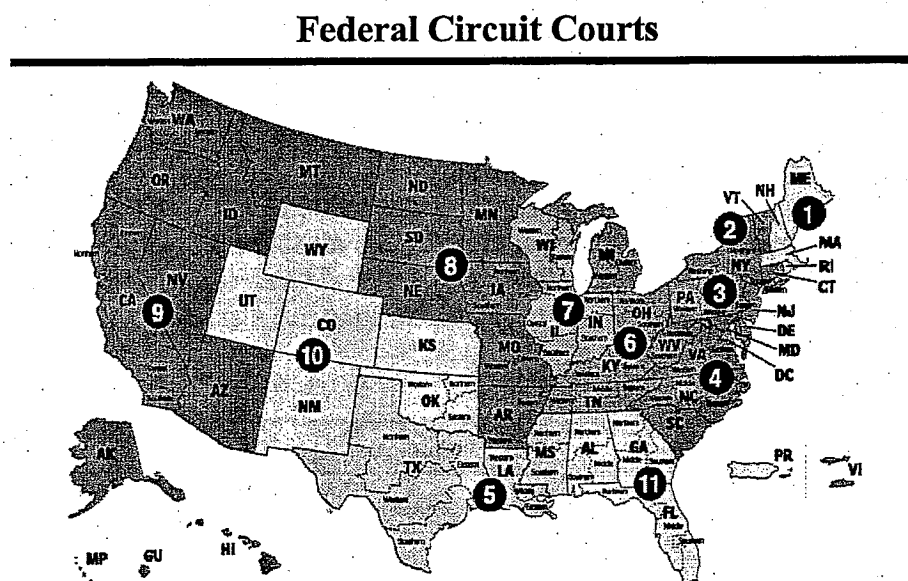
When the federal judiciary was established, Article III of the U.S. Constitution provided that federal judges would "hold their office during times of good behavior." The constitution does not define "good behavior" and as a consequence federal judges have been substantially insulated from political pressures and popular public opinion. It is in this way that the federal judiciary is able to exercise its powers and duties independently. Since only a very few federal judges have been removed from office through impeachment and conviction, the practical effect is that once appointed and confirmed, federal judges usually serve in office until they retire or die.

The federal judiciary is also different from the executive and legislative branches in that judges, unlike the president, senators, and representatives, do not have age, residency, and citizenship requirements.

## Federal Courts

The federal judiciary consists primarily of the same three levels of courts found in Utah: supreme court, court of appeals, and district court. The nation is divided into districts (trial courts) and circuits (for the Court of Appeals). Utah is its own district, but is part of the Tenth Circuit Court of Appeals. In general, federal courts handle matters that reach beyond the boundaries of a state, such as federal taxes, bankruptcy, immigration, interstate commerce, patent and copyright issues, and specific federal offenses in criminal matters. Figure 7-3 shows the geographic boundaries of the eleven federal circuit courts.

Figure 7-3



## State Model Selection

Each state is authorized to establish its own court system. Although each state decides for itself the structure of its courts, every state has an equivalent to a state supreme court, the highest court in the state; most have a court of appeals; and all have some form of trial court. Many states also have specialized courts that adjudicate matters of a single subject. Family courts, specialized tax courts, and juvenile courts are examples of limited jurisdiction courts.

In addition to deciding the structure of its court system, states also decide the method of judicial selection. All state judicial selection methods are either by election or appointment. Table 7-3 shows how each state selects its judges. Unlike federal judges who are appointed for life, nearly all state court judges require reappointment or reelection to serve additional terms of office.

Most states select their judges in either partisan or nonpartisan elections. Utah, prior to 1984, permitted election of its judges. However, in 1985, the judicial selection process was changed; not because Utah's electorate made poor selection choices, but rather because of the unavoidable consequences contested elections had on the judicial system. When Utah was debating its judicial selection methods, one astute observer noted that "there is no harm in turning a politician into a judge, he may become a good judge. The curse of the elective system is that it turns every judge into a politician. Judges selected through contested elections are obliged to engage in political activities in ways that prejudice their judicial independence."<sup>38</sup> Among other issues, it was simply seen as

inappropriate to require judges to seek campaign contributions from community leaders and lawyers who may appear in court as litigators, petitioners, and respondents.<sup>39</sup>

Utah now fills judicial vacancies through an appointment process known today as merit selection. This process includes a judicial nominating commission, gubernatorial appointment, and senate confirmation; subsequent terms of office are filled by an uncontested retention election. This merit-based system avoids the conflicts of interest inherent in an elective system and is a model supported by both the American Judicature Society and the American Bar Association.

Table 7-3

| Selection of Judges <sup>40</sup> |                      |                         |            |
|-----------------------------------|----------------------|-------------------------|------------|
| Partisan Election                 | Nonpartisan Election | Election by Legislature | Merit Plan |
| Alabama                           | Arizona              | Connecticut             | Alaska     |
| Arkansas                          | California           | Rhode Island            | California |
| Georgia                           | Florida              | South Carolina          | Colorado   |
| Indiana                           | Idaho                | Vermont                 | Indiana    |
| Illinois                          | Kentucky             | Virginia                | Iowa       |
| Kansas                            | Michigan             |                         | Kansas     |
| Louisiana                         | Minnesota            |                         | Missouri   |
| Mississippi                       | Montana              | Appointment by Governor | Nebraska   |
| New Mexico                        | North Dakota         | Delaware                | Oklahoma   |
| New York                          | Ohio                 | Hawaii                  | Tennessee  |
| North Carolina                    | Oregon               | Maryland                | Utah       |
| Pennsylvania                      | Oklahoma             | Massachusetts           | Wyoming    |
| Tennessee                         | South Dakota         | New Hampshire           |            |
| Texas                             | Washington           | New Jersey              |            |
| West Virginia                     | Wisconsin            |                         |            |

### ***Judicial Nominating Commissions***

Whenever a vacancy occurs in a juvenile, district, or appellate court, the governor shall fill the vacancy by appointment from a list of at least three nominees certified to the governor by the judicial nominating commission having authority over the vacancy.<sup>41</sup> Each nominating commission has authority over a certain geographic region which is known as a judicial district. The appellate court nominating commission has authority for vacancies occurring on both the supreme court and the court of appeals. The trial court nominating commissions have authority for vacancies for both the district and juvenile courts.

The composition and procedures of the nominating commissions are provided in statute. The Appellate Court Nominating Commission is responsible for the nomination of justices of the supreme court and judges of the court of appeals.<sup>42</sup> The Trial Court Nominating Commissions are responsible for the nomination of district and juvenile court judges.<sup>43</sup>

The composition and procedures of both the Appellate Court Nominating Commission and Trial Court Nominating Commission are identical in that each is comprised of seven voting members, no

more than four of whom may be from the same political party, and two of whom must be selected from a list of six names provided by the Utah State Bar. The chair of every commission is selected by the governor and no legislator may serve as a member of any nominating commission. The chief justice of the Utah Supreme Court is an *ex officio* member of every nominating commission, and is charged with the duty to ensure that each commission follows the rules adopted by the Judicial Council.<sup>44</sup> No later than forty-five days after convening, each nominating commission is required to certify a list of qualified nominees to the governor. The Appellate Court Nominating Commission is required to certify at least five but no more than seven nominees to the governor, and the Trial Court Nominating Commission is required to certify at least three but no more than five nominees to the governor.

### ***Gubernatorial Appointment***

Once a judicial nominating commission has nominated a judicial candidate, the governor receives the names of the nominees, along with each nominee's application materials and any public comments received by the Judicial Nominating Commission about the nominee. The governor is then required to appoint one of the nominees within thirty days.<sup>45</sup> In the event the governor fails to make an appointment within the required thirty-day period, the chief justice of the Utah Supreme Court shall make the appointment from the same list of nominees provided to the governor within twenty days.<sup>46</sup> Although the governor's selection procedures are not codified in statute or rule, the governor traditionally conducts a series of interviews with each judicial nominee.

### ***Senate Confirmation***

Before the person appointed by the governor to fill a judicial vacancy may take office, the Utah State Senate is required to confirm the appointee by majority vote within sixty days of the appointment. If the senate either fails to confirm the appointment within the required time period, or if the senate confirmation vote does not pass by a majority vote, the office shall be considered vacant and the entire selection process shall begin over with the judicial nominating commission.<sup>47</sup>

In summary, the nominating commissions ensure that the pool of candidates from which the governor must select are chosen based on legal qualifications and experience, and not political consideration. This method of judicial selection provides a process by which the interests of all three branches of state government are recognized.

### ***Retention Elections***

For additional terms of office, judges in Utah are not required to face the appointing authority, the legislature, or a contested election for each additional term in office, as is the case in more than forty other states.<sup>48</sup> Instead, every justice and judge of the juvenile, district, appellate, and supreme court is required to face the electorate in an unopposed retention election.<sup>49</sup>

At the first general election held more than three years after a justice or judge is initially appointed and confirmed by the senate, the justice or judge shall be subject to an unopposed retention election. After initial voter approval, justices of the Utah Supreme Court shall be subject to retention elections every tenth year; and judges of the juvenile, district, and court of appeals shall be subject to retention elections every sixth year. If at any retention election, a justice or judge does not receive a majority of affirmative votes to retain, the justice or judge is removed from office and may not be nominated by a judicial nominating commission to fill a judicial vacancy until the term for which the judge failed to be retained has expired.

Each justice or judge that stands for a judicial retention election is required to be evaluated by the Judicial Council. To assist the Judicial Council in making a determination as to whether or not a judge has met the minimum standards for certification, the council has established certification

standards. Although no judge has failed to be certified by the Judicial Council for not meeting the minimum standards, two judges have nevertheless been removed in a retention election.

### ***Discipline and Removal***

The Judicial Conduct Commission investigates and conducts confidential hearings regarding complaints against any justice or judge. This commission is authorized to order the reprimand, censure, suspension, removal, or involuntary retirement of any justice or judge for action which constitutes willful misconduct in office; final conviction of a crime punishable as a felony under state or federal law; willful and persistent failure to perform judicial duties; disability that seriously interferes with the performance of judicial duties; or conduct prejudicial to the administration of justice which brings the judicial office into disrepute, which includes a violation of the Code of Judicial Conduct.<sup>50</sup>

Upon a recommendation for discipline, the Utah Supreme Court reviews the proceedings of the Judicial Conduct Commission as to both law and fact, and the court may permit the introduction of additional evidence. After its review, the court, as it finds just and proper, is required to issue an order either implementing, modifying, or rejecting the recommendation for discipline issued by the Judicial Conduct Commission.<sup>51</sup>

Provisions for impeachment are found in the federal constitution and in forty-nine of the fifty state constitutions. In Utah, Article VI of the Utah Constitution provides for impeachment as a procedure for removing state and judicial officers for misconduct in office, typically described as high crimes, misdemeanors, and malfeasance in office.<sup>52</sup> Impeachment is a legislative procedure for removal of certain state and judicial officers under limited circumstances that does not involve either the executive or judicial branch, except in the impeachment of the governor, in which case the chief justice serves as the presiding officer in the senate during the trial.<sup>53</sup>

Impeachment consists of two procedures: the first is the sole responsibility of the House of Representatives which begins with articles of impeachment that describe the alleged misconduct and culminates with a vote of whether or not to impeach.<sup>54</sup> Upon a majority vote by the House of Representatives to impeach, the second procedure entails a trial by the State Senate using the articles of impeachment passed by the House of Representatives.<sup>55</sup> If convicted in the trial by the State Senate, the subject of the impeachment is removed from office and is disqualified from holding any office of honor, trust, or profit in Utah. Regardless of the charges contained in the articles of impeachment, the trial in the State Senate is limited to whether or not the subject of the impeachment shall be removed from office. Whether the subject of the impeachment trial is convicted or acquitted, that person may be nevertheless liable to prosecution, trial, and punishment in a court of law.<sup>56</sup>

A governor, state officer, or judicial officer in Utah has never been impeached by the House of Representatives or tried by the State Senate. However, the House of Representatives did file articles of impeachment against one judge, but the judge resigned after the Judicial Conduct Commission recommended an order of discipline to the Utah Supreme Court and before the House of Representative voted on the articles of impeachment.<sup>57</sup>

## **THE JUDICIAL PROCESS**

There are two basic types of actions within the court system: civil and criminal.

### ***Civil Actions***

Most citizens come into contact with the civil aspect of the judicial system. Civil litigation and dispute resolution cover problems that arise between two or more private persons. Civil litigation may involve personal injury in an accident, contract disputes, probate of a will, administration of

a trust, property disputes between landowners, divorce and other actions that most often do not involve federal, state, or local governments.

### *Criminal Actions*

The criminal system is a prosecutorial system in which federal, state, or local authorities address the contravention of specific laws and mete out penalties accordingly. Criminal actions are titled "State" or "United States" versus the criminal defendant. This indicates that the government is a party with a stake in the outcome. Through the passage of statutes and ordinances, governing bodies control which actions may be so titled. Table 7-4 shows the number of case filings, both civil and criminal, from July 1, 2003 to June 30, 2004.

Table 7-4

| Case Filings by District<br>Fiscal Year 2004* |         |          |          |         |
|---|---------|----------|----------|---------|
| District                                      | Civil** | Criminal | Juvenile | Total   |
| 1   | 6,851   | 1,552    | 3,619    | 12,022  |
| 2   | 60,778  | 11,641   | 10,126   | 82,545  |
| 3   | 69,128  | 13,505   | 19,588   | 102,221 |
| 4   | 53,342  | 10,102   | 7,128    | 70,572  |
| 5   | 4,940   | 2,573    | 3,637    | 11,150  |
| 6   | 1,516   | 753      | 1,385    | 3,654   |
| 7   | 2,262   | 1,120    | 1,680    | 5,062   |
| 8   | 2,287   | 1,191    | 1,426    | 4,904   |
| Totals  | 201,104 | 42,437   | 48,589   | 292,130 |

\*Source: Utah Caseload Statistics, <http://www.utcourts.gov/stats/>

\*\*Figure includes all district court case filings except criminal, and traffic and misdemeanor filings in justice courts.

### **GRAND JURY**

The traditional notion of a grand jury is that of a citizen panel sifting through mounds of evidence and calling witnesses in order to decide whether the government has enough evidence to prosecute "public enemy number one." Because of the expense and perceived seriousness of calling a grand jury, this is often the case. However, a grand jury can be formed to investigate any crime. In Utah, the formation of a grand jury is a two-step process.

A panel of five district court judges from throughout the state is appointed by the chief justice of the Utah Supreme Court. The panel is required to hold hearings in each judicial district at least once every three years.<sup>58</sup> At the hearings, the panel receives information from prosecutors and testimony from witnesses under oath concerning criminal activity within the state. If the panel feels that there is sufficient reason to call a grand jury, it will make findings in writing and may order a grand jury summoned. Alternatively, the panel may refer any information it receives to the county, district, or city attorney, or attorney general for investigation and prosecution.

The qualifications and selection method for grand jurors are the same as for regular jurors, but once sitting, the similarities end. The grand jury is an independent, investigative body. It may call and interrogate witnesses, request the production of documents or other evidence, and require that



the prosecutor draft reduced charges. In addition, even though its proceedings are conducted in secret, a complete record is made and kept. Once an indictment is made, it is sealed until a judge orders it public.<sup>59</sup>

Because of the expense, grand juries are used sparingly in Utah. The federal government requires a grand jury indictment for all criminal prosecutions, but the Utah system of county, district, and city attorneys makes that type of system unnecessary. Only two grand juries have been empaneled within the state in the last ten years.

### *Indigent Representation*

"In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defence."<sup>60</sup> The U.S. Supreme Court, in *Gideon v. Wainwright*, 372 U.S. 335, elaborated on the Sixth Amendment by declaring that if a person cannot afford to hire an attorney the state must provide an attorney for that person. This is only true, however, in criminal prosecutions where a person's life or liberty might be affected. For those infractions and misdemeanors where there is no possibility of incarceration, there is no right to a state-appointed attorney. This was recently reaffirmed by the U.S. Supreme Court in *Alabama v. Shelton*, 535 U.S. 654, where the Court affirmed the vacation of the defendant's suspended sentence because the conviction was obtained without the defendant being accorded the assistance of counsel.

Title 77, Chapter 32, Indigent Defense Act, describes the requirements and qualifications for indigent defense in Utah. Divided into seven distinct parts, the act addresses how the state determines which defendants qualify for indigent defense services, standards to be met by state and local governments as well as attorneys in the representation of indigents, compensation for attorneys appointed by the court to represent indigent defendants, and representation of prisoners. The act creates two trust funds for the funding of indigent defense in felony and capital cases.

### **USE OF INFORMATION TECHNOLOGY**

The legislature authorized the creation of the Administrative Office of the Courts in the 1973 Court Administrator Act. The administrative office is statutorily charged with providing centralized services to the courts including information services and technology.

Actual court data processing on a state level began in 1967 with the Juvenile Court's use of computers to keypunch data intake forms. By 1981, a State Judicial Information System (SJIS) became operational and was designed to collect statistics statewide on court activities. Other supporting information technology systems developed during the 1980s include the Trial Court Information System and the Courts Information System. The SJIS was upgraded in 1991 following recommendations of the Utah Commission on Justice in the Twenty-first Century.<sup>61</sup>

In the early 1990s, a standing committee on court technology was created to develop a long-term master plan for information technology use by the courts. Planning for the new information systems included providing for technology for the district, juvenile, and justice courts as well as the jury system.

Following the move to a new state court building in 1998, the Administrative Office of the Courts has continued to upgrade technology facilities and services for both public and private use. Those upgrades include broadband access to the Internet and the development of Web sites. Other examples of network-based improvements include the ability to file and retrieve court documents on line, and access to court staff and records. The public, the legal community, and others have made widespread use of the court's Internet access as demonstrated in figure 5-5.